

Testimony of Jens C. Hennig
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A Decade After 9/11 Could American Flight Schools Still Unknowingly Be Training Terrorists?
Committee on Homeland Security | Subcommittee on Transportation Security
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Introduction

Chairman Rogers, Ranking Member Jackson-Lee, distinguished members of the Subcommittee; my name is Jens Hennig and I am the Vice President of Operations for the General Aviation Manufacturers Association (GAMA). GAMA represents over 75 companies who are the world's leading manufacturers of general aviation airplanes, rotorcraft, engines, avionics, and components. Our member companies also operate airplane fleets, airport fixed-based operations, as well as pilot training and maintenance facilities worldwide.

On behalf of our members, I appreciate your convening this hearing to examine the Transportation Security Administration (TSA) security program for flight schools; often referred to as the alien flight student program¹.

GAO Recommendations

Today's hearing specifically focuses on recommendations by the Government Accountability Office (GAO) on ways to strengthen the alien flight student program. GAMA understands the recommendations of the GAO are twofold: 1) To strengthen the TSA and the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) interactions to ensure adherence to visa requirements; and 2) Improving data sharing between TSA and the Federal Aviation Administration (FAA) about FAA certified pilots.

GAMA views the GAO's recommendations as targeted and appropriate for strengthening specific parts of the framework of the alien flight program. If implemented these recommendations will clarify the requirements placed upon flight schools for identifying trainees and further define record keeping requirements about students.

GAMA believes additional program enhancements need to be implemented in other areas. We applaud action taken by TSA over the past several years to continue to improve the program, but we have also made recommendations in response to the Administration's regulatory review² that we believe will further streamline the program based on risk. These changes, if implemented, will better target the TSA's limited resources using risk consideration by aligning the required Security Threat Assessment (STA) for foreign nationals with other TSA security programs. GAMA is encouraged by the TSA's engagement with industry over the past four years to clarify the requirements and applicability of the

¹ 49 CFR Part 1552 Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees; Interim Rule.

² GAMA petitioned the Department of Homeland Security in response to its notice Reducing Regulatory Burden; Retrospective Review under Executive Order 13563, see Volume 76 Federal Register at 13526.

program and consider a risk based approach to vetting foreign nationals who elect to obtain flight training from companies certificated by the FAA.

History and Current State of the Program

The regulatory framework in place today originated after September 11, 2001. The program was originally administered by the Department of Justice (DOJ)³, but in 2003 Congress transferred the authority over background checks for flight training to the TSA^{4,5}. GAMA welcomed this shift in authority because the background check process under DOJ had effectively halted the U.S. flight training industry's ability to train foreign nationals, further exacerbating the effects of the 2000-2001 recession. The TSA established the requirements of the current program through the publication of an interim final rule in September 2004.

The interim final rule introduced four different categories to vetting foreign nationals based on the type of flight training that they would undertake where Category 1 or 2 is required for large aircraft; Category 3 is required for small aircraft; and Category 4 applies to recurrent flight training on an aircraft.

Due to its status as interim final regulation, however, the TSA program was not subject to the typical regulatory review and comment that allows work between an agency and the industry to establish an effective program that ensures security concerns are addressed without unnecessarily burdening industry as well as providing for a clear process for regulatory compliance.

During the last four years the TSA worked with industry through a cross section of policies, clarifications and interpretations to define today's alien flight student program requirements. Examples of issues that industry identified as needing new policy or clarification within the framework of the existing regulation include:

- What is defined as "recurrent training"?
- Who holds responsibility for ensuring compliance with the program when "dry leasing"⁶ a simulator?
- With respect to oversight of the program, does the TSA have responsibility to ensure that the foreign national is in the United States on a valid visa?⁷

The TSA's policy clarifications about the program greatly improved the processing time for a foreign national seeking flight training. Our members have seen the processing time for recurrent flight training

³ P.L. 107-71, the Aviation and Transportation Security Act (ATSA), Section 113 introduced a prohibition against flight training providers from providing flight training to aliens and certain designated individuals pending the Attorney General not notifying the training provider within 45 days that the candidate presented no threat to aviation or national security.

⁴ The impact of the DOJ program for vetting for aliens seeking flight training in the United States was discussed by GAMA in testimony before the Subcommittee on Aviation, Committee on Commerce, Science & Transportation of the U.S. Senate, Hearing on Aviation Security, on February 5, 2003.

⁵ Vision 100 Century of Aviation Act, Section 612.

⁶ The term "dry lease" refers to a flight training provider leasing its training facilities and devices to an airline which then conducts its training at the flight training provider's facilities using its equipment.

⁷ A number of other policy clarifications were developed or identified by industry including requirements for U.S. government employees; requirements for U.S. government sponsored employees that are foreign nationals; and handling of finger prints.

reduced to approximately to 1-2 days as compared to 3-6 days as recently as a couple of years ago. Additionally, the TSA's staff is directly engaged with industry and through their "help desk" function provide necessary support to achieve regulatory compliance for individual pilots and flight training providers.

Industry does, however, face a compilation of regulatory interpretations, policy letters, and frequently asked questions when determining how to comply with the program. The core remaining concern of industry is the requirement that a foreign national seeking to undertake flight training in the United States submit to an STA prior to starting each training course.

Economic Impact on the Flight Training Industry and Role of the Program

The United States is the global leader in pilot training. There are currently 688 active 14 CFR Part 141 FAA certificated flight schools and 256 active 14 CFR Part 142 certificated training centers⁸; many of which involve multiple locations and dozens of aircraft or simulators. Additionally, there is training conducted at many schools under 14 CFR Part 61. According to the FAA, approximately 22 percent of airman tests administered in 2011 were to foreign citizens⁹.

The economic importance of the foreign individuals seeking flight training in the United States cannot be understated. In 2011, the TSA conducted 47,651 individual checks of foreign nationals seeking flight training in the United States including 20,407 for Category 4 recurrent trainees¹⁰.

The future need for commercial, business and general aviation pilots continues to grow. In a forecast released just last week, the predicted need for commercial airline pilots will be 460,000 pilots worldwide through 2031¹¹. This figure does not include the tens of thousands of pilots needed by operators outside commercial aviation such as business and general aviation.

The TSA's alien flight program is at the center of commerce both for the companies that are in the business of pilot training, but also of great importance to manufacturers of commercial and general aviation aircraft and their operators. The impact on the manufacturing industry is indirect, but for each export of an aircraft to a foreign customer, the aircraft manufacturers will as part of the sales contract include the training of the customer's pilots. Without the ability to effectively train pilots to safely operate aircraft, the aviation manufacturing and operator industry would be grounded. The U.S. based flight training and aircraft manufacturing industry supports tens of thousands of high-paying jobs.

GAMA's members worked with the TSA to facilitate the vetting of 16,683 customers' individual checks in 2011 including 56 percent of the Category 4 checks. Training is conducted by GAMA members in numerous flight training centers across the United States and the world in hundreds of simulators and aircraft.

⁸ Organizations certificated by the FAA under 14 CFR Part 141 typically conduct primary training which is regulated by the TSA under Category 3 while organizations certificated under 14 CFR Part 142 typically conduct aircraft type specific training and are regulated by the TSA under Category 1, 2 and 4 of the 49 CFR Part 1552.

⁹ See, FAA analysis of airman certification knowledge exams in response to GAMA request July 12, 2012.

¹⁰ See, TSA analysis of 2011 alien flight activity in response to GAMA request received July 13, 2012 identified Category 1 (3,930), Category 2 (4,095), Category 3 (19,219), and Category 4 (20,407) for a total of 47,651 checks.

¹¹ See, 2012 Pilot and Technician Outlook, Boeing, July 11, 2012 at www.boeing.com/commercial/cmo/pilot_technician_outlook.html

GAMA's Petition for Regulatory Review

GAMA began work with the TSA in 2009 to address several policies that we believe were either unclear or not addressed when the requirements for vetting foreign nationals were established. TSA had recognized the issues that existed with the program and worked cooperatively with industry to develop guidance. One example was the uncertainty about what the TSA viewed as constituting "recurrent training"¹² which had the troublesome effect of the same person being subject to not one STA, but often several STAs for different programs over the course of just a few weeks. There were also different interpretations applied to flight training providers as to what activity would require the trainee to undergo another Category 4 recurrent check.

TSA published a new policy¹³ that provided clarity about recurrent training in 2010. The TSA's new policy identified what types of courses are subject to STA using common aviation terminology. This policy has had the positive impact of reducing the number of times that the same person is vetted by the TSA in a short period of time. This efficiency has greatly enhanced the competitiveness of FAA certified flight training providers and was achieved without reducing security since all foreign nationals are still subject to the same STA, but without the duplication.

The TSA, working jointly with industry during 2009 through 2011, successfully implemented a number of other policy clarifications for the alien flight program that resulted in shorter threat assessment review times and reductions in the number of times one person is vetted by the TSA within a short period of time. The program, however, in its current status as an interim final rule remains difficult to understand for applicants and still includes several inefficiencies. As a result, numerous policy clarifications have been necessary and the TSA was prompted to post a Frequently Asked Question section on its website. The flight training industry is also experiencing some confusion in the field when subject to TSA audits since the current program looks quite different from the requirements in 49 CFR Part 1552.

The primary inefficiency remaining is the requirement to vet a foreign national for stand-alone training courses for new certificates or ratings. There are two common problems.

- 1) Persons who are not pilots, but come to the United States to become commercial pilots, (so called *ab initio* training). A training program to become a commercial pilot covers 4-5 separate FAA certificates or ratings which are typically taken by the student over the course of one year. Currently, the TSA program requires that the foreign national submit to the alien flight program

¹² Congress specifically separated the requirements for recurrent training, that is pilots who already know how to competently and safely operate and aircraft, when transferring the authority to the TSA as it is widely recognized that STAs of a pilot who is in the United States to undertake recurrent training exposes the aviation system and national security to de minimis risk. Congress, however, in 2009 expanded the requirements of the alien flight student program in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Appropriations Act of 2009), which amends 6 U.S.C. 469, and requires the Secretary of the Department of Homeland Security to (1) establish a process to determine that an alien who takes recurrent flight training is properly identified and does not pose a threat to aviation or national security; and (2) impose reasonable fees to recoup the cost of checking recurrent training candidates.

¹³ TSA Docket No. TSA-2004-19147, Interpretation of "Recurrent Training" and Changes to Security Threat Assessment Process for Recurrent Training, September 13, 2010.

STA for each individual certificate or rating course with the result that the TSA conduct multiple vets of the same person within one year for a corresponding fee for each vetting.

- 2) Professional pilots that hold multiple type ratings which each permit that pilot to fly a unique aircraft. The pilots with multiple type ratings that elect to do recurrent type rating training in the United States must submit to the STA for each type rating they hold. This means that a foreign national in the United States doing three type ratings within a couple of weeks must submit their information to an STA three times prior to starting training.

These practices raise costs, create confusion and they do not enhance security. It is GAMA's belief that the intent of Congress and the regulation was not to vet the same person on multiple occasions simultaneously or with high frequency, but instead ensure that each person that receives FAA flight training is vetted one time prior to the start of training and that the TSA has an understanding of who is taking flight training. If not, the TSA wastes scarce federal resources when checking the same person multiple times, sometimes on the same day. At the same time, industry is subject to duplicative and redundant requirements at direct cost through the payment of the STA fee and indirectly through the requirement to submit the same personal identifiable information multiple times.

GAMA believes that the TSA should shift its approach to Security Threat Assessment of foreign nationals seeking flight training to the approach in other TSA programs. For example, instead of having the STA be event based (that is, when a person elects to do a certain activity), it could be time based (that is, the person be required to submit to an STA with a certain frequency and allow the agency to maintain the information about the individual to conduct constant vetting of that person's name and information against appropriate threat lists and the flight training provider notifying the TSA that additional training is about to commence with that person.)

On April 13, 2011, GAMA petitioned the TSA to rewrite the alien flight student program in response to the Administration's call for a regulatory review of all agencies. In our petition, we identified several areas that need further policy clarifications and proposed that the TSA shift to require foreign nationals to be vetted no more frequently than annually. GAMA also proposed the removal of the four categories in the existing program and the sunset of recurrent training as a separate requirement in favor of a single consistent process where the flight training provider and the TSA ensure foreign nationals are subject to an STA within the prescribed timeframe.¹⁴ GAMA's petition was formally endorsed by the Aircraft Owners and Pilots Association (AOPA), the main association representing the general aviation pilot community¹⁵.

In its final plan for executing the regulatory review, the Department of Homeland Security accepted GAMA's proposal¹⁶. At the same time, DHS identified the TSA's plan to introduce a streamlined procedure for students; implement new information technology infrastructure to better administer the program; make the STA valid for five years; and sunset the four categories for training in the existing program. We believe these changes will benefit both TSA and students and that the rewrite of the program would lend itself to incorporate those recommendations by the GAO that are applicable to regulated entities. GAMA also expects noticeable savings to the TSA through a reduced volume of STAs;

¹⁴ See, TSA Docket No. DHS-2011-0015: DHS Retrospective Review

¹⁵ See, TSA Docket No. DHS-2011-0015; AOPA Letter Dated April 12, 2011

¹⁶ U.S. Department of Homeland Security, Final Plan for the Retrospective Review of Existing Regulations, August 22, 2011.

more targeted oversight through a more efficient program; and enhanced competitiveness of U.S. based flight schools when catering to the growing worldwide pilot training market.

Next Steps

GAMA, in cooperation with other associations and our member companies, have worked with the TSA since 2011 to further refine the new regulatory framework of the alien flight student program. GAMA met as recently as February with the TSA to respond to questions on specific ways to enhance the program including new information technology. We continue to encourage the TSA to prioritize the rewrite internally and to advocate consideration by the Department of Homeland Security so that the rulemaking process can conclude.

While the agency has been a willing partner for the alien flight program, its inability to complete other rulemaking continues to impede our manufacturing competitiveness and the DHS's rulemaking pipeline remains a concern to GAMA.

Mr. Chairman, thank you for providing me the opportunity to discuss with the subcommittee an overview of the necessary changes to the alien flight student program. GAMA believes that these changes will streamline the program, increase government efficiencies, and provide a more effective execution of vetting of foreign national seeking flight training in the United States. At the same time, the restructuring of the program will also lend itself to the enactment of GAO's recommendations in a new, clear regulatory framework that industry and government can build upon in a safe and secure manner.

Thank you and I would be glad to answer any question that you may have.
